IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10340 of 1999

with

SPECIAL CIVIL APPLICATION No 169 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI PALJIBHAI

Versus

ADDL. CHIEF SECRETARY

Appearance:

1. Special Civil Application No. 10340 of 1999

MR MURALI N DEVNANI for Petitioner

Mr.S.P. Hasurkar for Respondent No. 1

MR.A.D. Oza, Govt. Pleader for Mr. SP HASURKAR for Respondent No. 2

MR DP JOSHI for Respondent No. 5

2. Special Civil ApplicationNo 169 of 2000

MR MURALI N DEVNANI for Petitioner

Mr.S.P. Hasurkar for Respondent No. 1

MR A.D. Oza, Govt. Pleader for Mr.SP HASURKAR for Respondent No.2

MR DP JOSHI for Respondent No. 5

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 02/05/2000

COMMON ORAL JUDGEMENT :

Rule. Service of the rule is waived by Mr.S.P. Hasurkar, Mr.A.D. Oza and Mr.D.P. Joshi for respondents nos.1, 2 and 5 respectively.

2. With the consent of the parties, the matter is taken up for final disposal.

3. Both these petitions are filed by the petitioners who are working in the Police Department at Rajkot. The petitions are filed as the petitioners arelikely to be allotted some residential quarters constructed by the Gujarat Police Housing Corporation Ltd. at Mavdi, which is about 8 KMs. away from Rajkot.

4. It is the case of the petitioners that while construction work of the quarters in question was in progress, some blocks had fallen down. As it happened during lunch hours, no worker was present at site and hence no casualty took place. It is the case of the petitioners that the quality of work was very poor and that the petitioners along with their families are apprehending danger to their life in case the department forces them to take possession of the said quarters. It is also the case of the petitioners that there are no basic amenities available in Mavdi area. The petitioners have, therefore, prayed that they shall not be compelled to occupy those quarters. It is also the case of the petitioners that due to some political influence and involvement of the higher officers of the department, construction work is done without following proper rules and regulations and the requirement of necessary test for bearing capacity of the building is also given a go by. The relief as prayed for by the petitioners is that the respondent authorities be directed not to go ahead with the allotment of the said quarters till getting an opinion from an independent agency for the standard of construction and other relevant aspects.

5. In Special Civil Application No.169 of 2000,an affidavit in reply dated 28.3.2000, is filed by one Ms.R.M. Mehta, Deputy Secretary, Home Department and

thereafter another affidavit in reply dated 29.3.2000, by one Shri V.K. Patel, In charge Executive Engineer of Gujarat Police Housing Corporation Ltd. was filed. Along with the latter affidavit number of annexures are produced wherein in Annexure 'I', it is mentioned that on 3.6.1997, one block of 'C' category had collapsed and that 4 blocks of 'C' category and 11 blocks of 'B' category are in existence. Pursuant to that incident the Superintending Engineer had visited the site on 4.6.1997 and that one private structural consultant, Shri Domadia was assigned the work of investigation into the causes of collapse. In addition to that the Secretary, Public Works Department was also intimated about the same and was assigned the work of investigation into the incident by their quality control department. At Annexure 3, a report from Messrs Star Architects is also produced. The affidavit in reply filed by Shri V.K. Patel mentioned in para 8, as under :

> "I respectfully say and submit with regard to the allegation that cement mortar and cement concrete used in the construction were of substandard. I say and submit that if it is so we are duty bound to take action against the Contractor as such thing can never be tolerated, but to arrive at such conclusion is premature, because the final report is yet to come and after final report of the investigation, if it will come out then we are duty bound to take appropriate measures against such wrong doers. .. .."
> (emphasis supplied)

Mr.Devnani, learned advocate for the petitioners invited attention of this Court to para 5 of the affidavit in reply filed by Ms.R.M. Mehta, Deputy Secretary of respondent no.1, Home Department, which reads as under:

> ".. .. It is submitted that prayer (C) with regard to not to allocate the quarter to the petitioner and compel them to occupy the same is the prayer which cannot be granted by writ of mandamus. I say and submit that on our part we have taken full measures, care and caution that nothing untoward can happen and after going through the reports of experts the office of the deponent herein is of the opinion that nothing untoward may happen. Therefore, is only one incident of falling of block and that cannot be put forward for settlement of other grievances. No employer can compel the employe to occupy particular house and therefore, such prayers are

required to be rejected and petition itself is misconceived. .. .." (emphasis supplied)

6. The learned Asstt. Govt. Pleader, Mr.Joshi, however, submitted that if the petitioners do not desire to occupy the quarters, they shall not be entitled to HRA. The submission of Mr.Joshi would have been just and proper in absence of the incident of collapse of the block on 3.6.1997, but in the facts and circumstances of the present case, when the final report is yet to come, and there is an affidavit by the Deputy Secretary, Home Department that no employer can compel an employee to occupy a particular house, it is deemed fit that the present petition be partly allowed and the respondents be restrained from proceeding ahead with the allotment of the said quarters till final report is received from the independent agency.

7. In the result, the petition is partly allowed and the respondents are restrained from proceeding ahead with the allotment of the quarters built up at Mavdi till receipt of the final report from an independent agency. The petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

(Ravi R. Tripathi, J.)

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